

1993

The State of Utah v. Timothy Gene Garcia : Brief of Appellee

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca1



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Jan Graham; Attorney General; attorney for appellee.

Ronald S. Fujino; Salt Lake Legal Defender Assoc.; attorney for appellant.

Recommended Citation

Brief of Appellee, *State of Utah v. Timothy Gene Garcia*, No. 930104 (Utah Court of Appeals, 1993).
https://digitalcommons.law.byu.edu/byu_ca1/3980

This Brief of Appellee is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

UTAH COURT OF APPEALS

BRIEF

DOCUMENT

FILED NO. 930104 IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff-Appellee,	:	Case No. 930104-CA
v.	:	
TIMOTHY GENE GARCIA,	:	Category No. 2
Defendant-Appellant.	:	

BRIEF OF APPELLEE

- - - - -

APPEAL FROM A CONVICTION OF UNLAWFUL
DISTRIBUTION OF OR OFFERING, AGREEING,
CONSENTING OR ARRANGING TO DISTRIBUTE A
CONTROLLED SUBSTANCE, A SECOND DEGREE FELONY,
IN THE THIRD JUDICIAL DISTRICT COURT, IN AND
FOR SALT LAKE COUNTY, STATE OF UTAH, THE
HONORABLE TIMOTHY R. HANSEN, PRESIDING

JAN GRAHAM (1231)
Attorney General
DAVID B. THOMPSON (4159)
Assistant Attorney General
236 State Capitol
Salt Lake City, Utah 84114

Attorneys for Appellee

RONALD S. FUJINO
Salt Lake Legal Defender Assoc.
424 East 500 South, Suite 300
Salt Lake City, Utah 84111

Attorney for Appellant

FILED
Utah Court of Appeals

JUL 19 1993

Mary T. Noonan
Mary T. Noonan
Clerk of the Court

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff-Appellee,	:	Case No. 930104-CA
v.	:	
TIMOTHY GENE GARCIA,	:	Category No. 2
Defendant-Appellant.	:	

BRIEF OF APPELLEE

- - - - -

APPEAL FROM A CONVICTION OF UNLAWFUL
DISTRIBUTION OF OR OFFERING, AGREEING,
CONSENTING OR ARRANGING TO DISTRIBUTE A
CONTROLLED SUBSTANCE, A SECOND DEGREE FELONY,
IN THE THIRD JUDICIAL DISTRICT COURT, IN AND
FOR SALT LAKE COUNTY, STATE OF UTAH, THE
HONORABLE TIMOTHY R. HANSEN, PRESIDING

JAN GRAHAM (1231)
Attorney General
DAVID B. THOMPSON (4159)
Assistant Attorney General
236 State Capitol
Salt Lake City, Utah 84114

Attorneys for Appellee

RONALD S. FUJINO
Salt Lake Legal Defender Assoc.
424 East 500 South, Suite 300
Salt Lake City, Utah 84111

Attorney for Appellant

TABLE OF CONTENTS

	Page
JURISDICTION AND NATURE OF PROCEEDINGS	1
STATEMENT OF ISSUES PRESENTED ON APPEAL AND STANDARDS OF APPELLATE REVIEW	1
CONSTITUTIONAL PROVISIONS, STATUTES AND RULES	2
STATEMENT OF THE CASE	2
STATEMENT OF FACTS	2
SUMMARY OF ARGUMENT	2
ARGUMENT	
POINT I THE TRIAL COURT'S RESTITUTION ORDER IS SUPPORTED BY SIGNIFICANT AUTHORITY AND WAS PROPER	3
A. Standard of Review	3
B. The Merits	3
CONCLUSION	6

TABLE OF AUTHORITIES

CASES CITED

<u>Andrew v. Ideal Nat'l Ins. Co.</u> , 29 Utah 2d 343, 509 P.2d 367 (1973)	5
<u>City of Monticello v. Christensen</u> , 788 P.2d 513 (Utah), <u>cert. denied</u> , 489 U.S. 841 (1990)	1, 3
<u>Jensen v. Intermountain Health Care, Inc.</u> , 679 P.2d 903 (Utah 1984)	6
<u>McCormick v. Life Ins. Corp. of America</u> , 6 Utah 2d 170, 308 P.2d 949 (1957)	5
<u>People v. Evans</u> , 461 N.E.2d 634 (Ill. App. 1984).	6
<u>State v. Depaoli</u> , 835 P.2d 162 (Utah 1992)	4, 5, 6
<u>State v. Pettit</u> , 698 P.2d 1049 (Or. Ct. App. 1985)	4, 5
<u>State v. Singh</u> , 819 P.2d 356 (Utah App. 1991)	1, 3
<u>State v. Twitchell</u> , 832 P.2d 866 (Utah App. 1992)	4, 6

STATUTES CITED

Utah Code Ann. § 58-37-8(1)(a)(ii) (Supp. 1992)	1, 2
Utah Code Ann. § 76-3-201 (Supp. 1992) (amended 1993)	3
Utah Code Ann. § 78-2a-3(2)(f) (Supp. 1993)	1

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff-Appellee,	:	Case No. 930104-CA
v.	:	
TIMOTHY GENE GARCIA,	:	Category No. 2
Defendant-Appellant.	:	

BRIEF OF APPELLEE

- - - - -

JURISDICTION AND NATURE OF PROCEEDINGS

This appeal is from a conviction of unlawful distribution of or offering, agreeing, consenting or arranging to distribute a controlled substance, a second degree felony, under Utah Code Ann. § 58-37-8(1)(a)(ii) (Supp. 1992).

This Court has jurisdiction to hear the appeal under Utah Code Ann. § 78-2a-3(2)(f) (Supp. 1993).

STATEMENT OF ISSUES PRESENTED ON APPEAL

AND STANDARDS OF APPELLATE REVIEW

The sole issue presented on appeal is whether the Metro Narcotics Strike Force, whose "buy money" was lost in defendant's crime, is a "victim" under Utah's restitution statute.

A trial court's statutory interpretation is accorded no deference on appeal, but is reviewed for correctness. City of Monticello v. Christensen, 788 P.2d 513, 516 (Utah), cert. denied, 489 U.S. 841 (1990); State v. Singh, 819 P.2d 356, 359 (Utah App. 1991).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Any relevant text of constitutional provisions, statutes, or rules pertinent to the resolution of the issues presented on appeal is contained in the body of this brief.

STATEMENT OF THE CASE

The State charged defendant with two counts of unlawful distribution of or offering, agreeing, consenting or arranging to distribute a controlled substance under Utah Code Ann. § 58-37-8(1)(a)(ii) (Supp. 1992) (R. 6-7).

Pursuant to a plea bargain, defendant pled guilty to one count, and the other count was dismissed (R. 16-24). The trial court then sentenced defendant to a term of one to fifteen years at the Utah State Prison, fined him \$1,600 plus an 85% surcharge, and ordered him to pay \$240 in restitution to the Metro Narcotics Strike Force (R. 26).

STATEMENT OF FACTS

A statement of facts beyond that which appears above in the Statement of the Case is not necessary to the resolution of the issues presented on appeal.

SUMMARY OF ARGUMENT

The trial court's restitution order was proper. Oregon, the immediate source of Utah's restitution statute, has ruled that the police are a "victim" under its restitution statute in a case presenting the identical issue as that presented here. Furthermore, the rationale behind the Oregon ruling, that restitution is allowable in cases in which the

parties are not "in pari delicto," is followed in Utah.

ARGUMENT

POINT I

THE TRIAL COURT'S RESTITUTION ORDER IS SUPPORTED BY SIGNIFICANT AUTHORITY AND WAS PROPER

Following his conviction, the trial court ordered defendant to pay restitution in the amount of \$240 to the Metro Narcotics Strike Force ("Metro Narcotics"), which paid defendant that sum in its sting operation. Defendant claims the restitution order is improper because Metro Narcotics is not a "victim" under the restitution statute.

A. Standard of Review

The trial court's statutory interpretation is accorded no deference on appeal, but is reviewed for correctness. City of Monticello v. Christensen, 788 P.2d 513, 516 (Utah), cert. denied, 489 u.s. 841 (1990); State v. Singh, 819 P.2d 356, 359 (Utah App. 1991).

B. The Merits

Utah Code Ann. § 76-3-201 (Supp. 1992) (amended 1993) provides in pertinent part:

(3)(a)(i) When a person is adjudged guilty of criminal activity which has resulted in pecuniary damages, in addition to any other sentence it may impose, the court shall order that the defendant make restitution up to double the amount of pecuniary damages to the victim or victims of the offense of which the defendant has pleaded guilty

. . . .

(4) As used in Subsection (3):

(b) "Pecuniary damages" means all special

damages, but not general damages, which a person could recover against the defendant in a civil action arising out of the facts or events constituting the defendant's criminal activities and includes, but is not limited to, the money equivalent of property taken, destroyed, broken, or otherwise harmed, and losses such as earnings and medical expenses.

. . .

(d)(i) "Victim" means any person whom the court determines has suffered pecuniary damages as a result of the defendant's criminal activities.

(ii) "Victim" does not include any coparticipant in the defendant's criminal activities.

The State has been unable to locate any Utah cases relevant to the reach of the term "victim" under the statute. However, in State v. Twitchell, 832 P.2d 866, 869 (Utah App. 1992), this Court recognized that Utah's restitution statute was derived from Oregon's restitution statute, that the statutes were substantially similar, and that Oregon case law was appropriate authority for interpreting Utah's restitution statute. See also State v. Depaoli, 835 P.2d 162, 163 (Utah 1992).

In State v. Pettit, 698 P.2d 1049 (Or. Ct. App. 1985), the court analyzed the precise issue raised by defendant in the instant case. The court concluded that a city police department was a "victim" entitled to restitution because it was capable of recovering "pecuniary damages" under the statute. Specifically, the court determined that the city could bring a civil action for rescission of an illegal contract (the contract for the purchase of drugs) and restitution. The court noted that while parties to an illegal contract are not generally entitled to rescission where they are equally at fault, the general exception to the

rule was applicable in this case where the city police were clearly not in "pari delicto" in acting to limit criminal activity. Id. at 1051.

The Utah Supreme Court has also recognized that restitution is available where parties are not equally at fault. See Andrew v. Ideal Nat'l Ins. Co., 29 Utah 2d 343, 509 P.2d 367, 370 (1973); McCormick v. Life Ins. Corp. of America, 6 Utah 2d 170, 308 P.2d 949, 952 (1957). Based on the acknowledged authority of Oregon law bearing on the meaning of section 76-3-201(3), and of Utah authority recognizing the rationale upon which Pettit relies, the trial court's restitution order was proper.

Contrary to defendant's argument, Depaoli does not require a different conclusion. There, the issue was whether the restitution statute authorized the trial court to order the defendant to pay restitution to the Salt Lake City Police Department (SLCPD) for the expense of a "code R" examination of the victim sexually assaulted by the defendant. The Utah Supreme Court held that, "[b]ecause the cost of the code R examination could not be recovered by the SLCPD in a civil action against [the] defendant, the SLCPD has not sustained pecuniary damages as defined by our statute and therefore is not a victim." 835 P.2d at 164. Here, under the rationale of Pettit, the police would be able to recover from defendant in a civil action; therefore, the police have suffered pecuniary damages as defined by the restitution statute and are a "victim."

Furthermore, although defendant presents a line of

authority that is contrary to Pettit, see People v. Evans, 461 N.E.2d 634, 639 (Ill. App. 1984), this Court has correctly looked to Oregon authority for interpretation of Utah's restitution statute. See Twitchell, 832 P.2d at 869. "[W]hen the Legislature adopts a statute from another state, the presumption is that the Legislature is familiar with that state's judicial interpretations of that statute and intends to adopt them also." Jensen v. Intermountain Health Care, Inc., 679 P.2d 903, 904 (Utah 1984) (citing 73 Am.Jur.2d Statutes § 333 at 46 (1974)). See also Depaoli, 835 P.2d at 164-65 (looking to Oregon case law for interpretation of Utah statute patterned after Oregon statute). Therefore, Pettit should be preferred over Evans.

CONCLUSION

Based on the foregoing arguments, this Court should affirm the trial court's restitution order.

RESPECTFULLY submitted this 19th day of July, 1993.

JAN GRAHAM
Attorney General


DAVID B. THOMPSON
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that two true and accurate copies of the foregoing Brief of Appellee were mailed, postage prepaid, to Ronald S. Fujino, Salt Lake Legal Defender Assoc., 424 East 500 South, Suite 300, Salt Lake City, Utah 84111, this 19th day of July, 1993.

David B. Thompson